

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

VS.

CR. NO. 14-3609 JB

BENTLEY STREETT,

Defendant.

Transcript of Status Conference proceedings  
before The Honorable James O. Browning,  
United States District Judge, Albuquerque, Bernalillo  
County, New Mexico, commencing on March 26, 2021.

For the Government: Ms. Sarah Mease (Via Zoom)

For the Defendant: Mr. Paul Linnenburger (Via Zoom)

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1 THE COURT: All right. Good afternoon  
2 everyone. I appreciate everybody making themselves  
3 available to me this afternoon.

4 The Court will call United States of  
5 America versus Bentley A. Streett, Criminal Matter  
6 No. 14-CR-3609 JB.

7 If counsel will enter their appearances for  
8 the Government.

9 MS. MEASE: Good afternoon, Your Honor.  
10 Sarah Mease for the United States.

11 THE COURT: Ms. Mease, good afternoon to  
12 you.

13 And for the defendant.

14 MR. LINNENBURGER: Good afternoon, Your  
15 Honor. Paul Linnenburger on behalf of Mr. Streett,  
16 who is present and participating via video from the  
17 institution where he is in custody.

18 THE COURT: All right. Mr. Linnenburger,  
19 good afternoon to you. Mr. Streett, good afternoon  
20 to you. Can you hear me, Mr. Streett?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. Well, we were  
23 supposed to have a sentencing today. I thought all  
24 my work was done for it, but I guess we're going in a  
25 different direction now. And so y'all requested a

1 status conference -- or I guess you did, Mr.  
2 Linnenburger. So if you want to address the Court,  
3 you may do so.

4 MR. LINNENBURGER: Thank, Your Honor. Your  
5 Honor, I think as the Court is aware that there is a  
6 pending motion to withdraw the plea. I anticipate  
7 the likelihood of a second motion to withdraw the  
8 plea based on a different argument in a different  
9 section of the rule to be filed within the next week.  
10 And so I asked for a status conference because I  
11 wanted to -- I was hoping to discuss with the Court  
12 scheduling. And I know that as to the first motion  
13 to withdraw that the Government made, believes that  
14 they may need testimony --

15 THE COURT: Hold on, hold on.

16 MR. LINNENBURGER: -- may need evidence. I  
17 anticipate --

18 THE COURT: Hey, hold on. Let me get my  
19 calendar up here if we're going to discuss that.  
20 Hold on. I left it in my chambers.

21 All right. Go ahead, Mr. Linnenburger.

22 MR. LINNENBURGER: I anticipate as to the  
23 second motion to withdraw -- and I have had basic  
24 conversations with the Government as to what the  
25 general grounds of that would be -- I anticipate that

1 they will seek to put on evidence as to that second  
2 motion. And I apologize on the timing, Your Honor.  
3 After taking -- getting appointed to this case, as  
4 quickly as I could, I got through the 5000-some pages  
5 of discovery. As well as the Court knows there have  
6 been multiple prior counsels. So it took some time  
7 to gather up materials from prior counsel and to get  
8 through those as well to make sure that I had fully  
9 examined these issues relating to a possible  
10 withdrawal of the plea.

11 And so for that reason, Your Honor, I --  
12 you know, I would anticipate that by late April or  
13 mid April, briefing will be completed as to both  
14 motions. And if the Court wishes to hear evidence as  
15 to the first motion, I imagine it will be a  
16 significant overlap as to the evidence that would be  
17 presented towards each. The first, Your Honor,  
18 addresses arguments under Rule 11(b)(3). The second  
19 would be what I would call a more traditional motion  
20 to withdraw the plea.

21 And so with that, Your Honor, I had just  
22 hoped for an opportunity to get with the Court, and  
23 to make sure that we can have these issues addressed  
24 prior to preparations for sentencing. I understand  
25 that previously there had been, at least through the

1 informal objections process, issues with the PSR had  
2 been raised with Probation. And in an effort to  
3 preserve some resources, I have not yet delved into  
4 fully -- although I have in my review, and I  
5 anticipate there would be some significant objections  
6 related to the PSR -- but I did not want to expend  
7 those resources, if ultimately that would be  
8 unnecessary due to a granting of a motion to withdraw  
9 the plea, Your Honor.

10 THE COURT: Well, I'm not asking you to  
11 argue the motion, but what is -- a three-sentence  
12 paragraph -- the basis for him wanting to withdraw in  
13 the first motion?

14 MR. LINNENBURGER: Your Honor, in the first  
15 motion, boiled down to its essence, we have argued  
16 that there is a lack of factual basis as to one of  
17 the counts that was included in the plea, under Rule  
18 11(b)(3), and I think that provides a fair and just  
19 reason for withdrawal.

20 And the second, as I said, will be a more  
21 traditional analysis of the Tenth Circuit factors  
22 related to Rule 11(d).

23 THE COURT: Early in my career I would  
24 always grant motions to withdraw, and it was just --  
25 it was just a train wreck. I just saw train wreck

1 after train wreck, with men spending the rest of  
2 their lives in prison because they decided to  
3 withdraw from plea agreements and go to trial, and  
4 then literally get life sentences after that.

5 I guess I just -- you know, I haven't  
6 studied everything in preparation for a sentencing  
7 because we keep getting close, but never get there.  
8 But I just have a real foreboding of Mr. Streett  
9 wanting to get out of the plea agreement. Because my  
10 experience has taught me that it's usually -- I'm  
11 just watching a train wreck occur. I'm sure you've  
12 talked to him. You're an experienced counsel.  
13 You've probably seen the same thing. It's just  
14 usually pretty ugly when we try to go to trial on  
15 something like this, and people walk away from a plea  
16 agreement.

17 MR. LINNENBURGER: Your Honor, not to get  
18 into -- without getting into any privileged  
19 conversations, I can represent to the Court that I  
20 have had numerous discussions with Mr. Streett as to  
21 the potential ramifications of seeking to withdraw  
22 the plea, and if it ultimately got there, the  
23 potential ramifications of a successful withdrawal of  
24 the plea.

25 THE COURT: Mr. Streett had concerns before

1 he pled guilty about the factual basis of one or more  
2 of the counts, because he wrote me letters telling me  
3 that Mr. Lopez yelled at him and they had  
4 disagreements about the factual basis. So it's a  
5 little hard to say that that issue did not exist  
6 before Mr. Streett went into -- I believe in front of  
7 a magistrate judge -- and went ahead and decided to  
8 plead to the factual basis of those. And like I  
9 said, I have not studied the plea agreement, but I  
10 will bet that, even though -- if he were successful  
11 in withdrawing his plea or plea agreement that those  
12 representations that he made to the magistrate judge  
13 could be used against him at the trial. I have seen  
14 that. And that's what makes withdrawing from a plea  
15 so ugly in this district.

16 MR. LINNENBURGER: Your Honor, and I --  
17 again, without -- avoiding getting into any  
18 privileged matters, either communications between  
19 myself and Mr. Streett, or work product issues -- is  
20 that part of the reason that it has taken some time  
21 in the filing of these motions was, I have been  
22 working through my duties as -- of candor to the  
23 Court -- and to ensure that the arguments that were  
24 presented that I was comfortable that they were  
25 viable, Your Honor.

1 THE COURT: All right. Thank you, Mr.  
2 Linnenburger.

3 Ms. Mease, your thoughts on any issues  
4 here? And then maybe I can work with y'all to get a  
5 date set before we leave here today to have a hearing  
6 on these two motions if there are going to be two.  
7 Ms. Mease?

8 MS. MEASE: Thank you, Your Honor. In the  
9 Government's response to the first motion to  
10 withdraw, I filed a lengthy response, and obviously  
11 we're not arguing that now and I'm not going to get  
12 into the weeds on that, but I did suggest that an  
13 evidentiary hearing was not necessary.

14 Without seeing Mr. Linnenburger's new  
15 motion, second motion, I can't really take a position  
16 on whether I would need to put on evidence. So I'm a  
17 little hesitant to commit to a date here, because I  
18 would need to confer with Mr. Lopez, because he would  
19 likely be the party that I would put on to testify  
20 regarding, you know, plea negotiations and the  
21 discussions he had with Mr. Streett leading into the  
22 plea.

23 So perhaps if the Court could give us a  
24 couple date options, we could get that reserved for  
25 at least argument, and I could have Mr. Lopez try to



1 keep that open in the event I do need to call him as  
2 a witness.

3 The other thing I'll mention to the Court  
4 is Mr. Lopez and I, after the plea, we had some  
5 discussions that I think may be beneficial here. We  
6 were considering proposing for the Court some type of  
7 sentencing scheduling order. And I think that may be  
8 helpful here. I know in some ways that's putting the  
9 cart before the horse, when we haven't had a ruling  
10 on the motion to withdraw. But it may be beneficial  
11 to at least lay out a timeline for a hearing, at  
12 least from the parties on legal arguments on the  
13 motion to withdraw, with the possibility that there  
14 could be evidence there, depending on what's included  
15 in Mr. Linnenburger's second motion, a deadline for  
16 formal objections to the PSR, and a deadline for a  
17 sentencing memoranda, and then the sentencing  
18 hearing.

19 This case, as the Court knows, has just  
20 been pending for such a long time, I would really  
21 like to keep things moving. And I think the best way  
22 to do that is just to lay out some firm deadlines  
23 that the parties can work toward, with the  
24 understanding that, if for some reason the Court were  
25 to grant the motion to withdraw -- which I so far

1 have seen nothing that would warrant that -- that we  
2 would need to revisit the scheduling order. But I  
3 think we need to just keep moving forward as best we  
4 can here.

5 THE COURT: All right. Well, let's circle  
6 back to some of those issues in a moment, Ms. Mease.

7 Mr. Linnenburger, when do you think these  
8 two motions -- assuming there will be motions -- the  
9 second motion -- when do you think they will be fully  
10 briefed and ready to go?

11 MR. LINNENBURGER: Your Honor, I don't  
12 believe -- assuming a normal briefing schedule for a  
13 response, and obviously if Ms. Mease requires  
14 additional time, I would be more than willing to  
15 agree to that, but I suspect that she would not --  
16 she may not. But I would think that by the end of  
17 April it is likely that full briefing would be  
18 accomplished. I think that following the response I  
19 could get a reply in relatively short order, and that  
20 we'd be prepared for a hearing on these, essentially,  
21 anytime in May the Court may have available, Your  
22 Honor.

23 THE COURT: Okay. Let me ask Ms. Rotonda  
24 to look at the calendar for the first week of May and  
25 see what we have.

1 Do you have an estimate as to how long you  
2 think the hearing would last for these two motions,  
3 Mr. Linnenburger?

4 MR. LINNENBURGER: Your Honor, my best  
5 estimate at this time would be that it would be best  
6 to set aside half a day. I can represent to the  
7 Court that I am almost certain that the Government  
8 will seek to put on evidence. And so -- and I  
9 anticipate that it would be prior counsel. And so I  
10 would think half a day would be safe, Your Honor.

11 THE COURT: All right. Does that estimate  
12 sound about right to you, Ms. Mease?

13 MS. MEASE: Your Honor, I think so. I know  
14 the Court recalls there were two attorneys  
15 representing Mr. Streett ahead of the plea, Mr. Lopez  
16 and Mr. Zimmerman. If Mr. Linnenburger is confident  
17 that I will need to put on witnesses, there is a  
18 chance I may put on two. I don't know if Mr. Streett  
19 intends to testify. If Mr. Linnenburger is prepared  
20 to speak to that now, that would help. But  
21 otherwise, I would almost suggest setting aside a  
22 day, just to account for extra testimony, if it's  
23 needed.

24 THE COURT: Okay. So what do we have that  
25 week of the 3rd through the 7th?

1 (A discussion was held off the record.)

2 THE COURT: All right. Let me give you  
3 some options, and maybe this fits in to somebody's  
4 suggestion -- it might have been Ms. Mease's -- that  
5 I give you some backups. I want to leave here with  
6 something set, but you can also call back and talk to  
7 Ms. Rotonda if something else works out.

8 The first -- on the 3rd, 4th, and 5th of  
9 May, I'm in a bench trial in a case that the parties,  
10 after they got my ruling on some legal issues, have  
11 decided to -- instead of having a jury trial, have a  
12 bench trial. So the 3rd, 4th, and 5th. That's a  
13 long ways off. You know, it's a civil case. Chances  
14 are it will settle, but I just don't know. But I  
15 could give you a backup there if you wanted it, and  
16 then we could just see how it goes. The 6th and 7th,  
17 I have Daubert hearings in that Padilla case. That's  
18 the SNM case that is Phase 2. It's the one where  
19 they're bringing some charges against people because  
20 of one of the witnesses in the first round being  
21 murdered up in Las Vegas. So those are set there.  
22 Again, I don't know, there are a lot of moving parts  
23 in that case, too. So I could give you backup on  
24 those. On the 11th and 12th; on the 11th I have a  
25 two-motion hearing in a civil case. It's an

1 automobile accident case; just don't know how long  
2 that will take and what -- I haven't looked at the  
3 motions.

4 On the 12th, I have one of these releases  
5 from prison, compassionate releases, for Tommy  
6 Rodella up in Las Vegas. He's about the last two  
7 years of his term.

8 The 13th, did you say it was free? Oh, I  
9 have two pretrial conferences. So here's what I  
10 could do: I could give you backups on one or more of  
11 those dates. The 11th and 12th, I could just set you  
12 sometime a little bit later; wouldn't give you a full  
13 day, but would give you something. If it turned out  
14 one of those went away, then we could bump you  
15 forward and give you a full day. The 13th I've got  
16 two pretrial conferences. Still a long ways out.  
17 They may go away. Even if they didn't go away, you  
18 could come in and work around them during the day.  
19 Any of those, one or more of those dates or options  
20 appeal to you, Ms. Mease?

21 MS. MEASE: Looking at my calendar, I can  
22 make any of those work, so I'll put those dates in an  
23 email to Mr. Lopez and Mr. Zimmerman.

24 THE COURT: Okay. All right. What do they  
25 look like -- what would be your preference, Mr.

1 Linnenburger?

2 MR. LINNENBURGER: I'm completely -- at the  
3 moment I'm completely open on all of those days. I  
4 think it probably would make the most sense to go  
5 with some of the dates the second week. It sounds as  
6 those may be more likely. And obviously, I'll defer  
7 to the Court, but it sounds as though we may be more  
8 likely to be assured a time in those dates than we  
9 would for either the bench trial or the Daubert  
10 hearing the week before.

11 THE COURT: Okay. Why don't I do this: I  
12 don't think that compassionate release will take too  
13 long. I'll have read everything. Does that start at  
14 8:30?

15 THE CLERK: Yes.

16 THE COURT: Why don't I put you on at 10:00  
17 on the 12th, so we'll have something in place. Then  
18 y'all just stay in touch with Ms. Rotonda. And Ms.  
19 Mease, if you find out that Mr. Lopez, Mr. Zimmerman  
20 aren't available, then you can work to get another  
21 one. I think it would be better if we got something  
22 on the calendar so other things don't start filling  
23 it up, if I get a break on a trial or a Daubert  
24 hearing or something. Does that work for you, Ms.  
25 Mease, if we do that, 10:00 on the 12th, right at the

1 moment?

2 MS. MEASE: Yes. I like that plan, Your  
3 Honor.

4 THE COURT: Is that all right with you, Mr.  
5 Linnenburger?

6 MR. LINNENBURGER: It is, Your Honor.  
7 Thank you.

8 THE COURT: And we'll stay fluid. If that  
9 doesn't work for Mr. Lopez or Mr. Zimmerman, call  
10 Ms. Rotonda and we'll give you another -- it might be  
11 a backup, but I still think it would be better if we  
12 get something out there than not have something set,  
13 even if we consciously know it's a backup.

14 So what other dates would you like as far  
15 as your sort of timetable to sentencing, assuming  
16 that I don't grant the motions -- and I'll keep an  
17 open mind, I'll read everything and be prepared, so  
18 I'm not foreclosing it by just setting a timetable --  
19 but what other dates would you like, Ms. Mease?

20 MS. MEASE: Your Honor, if I can ask how  
21 long you would likely need following an evidentiary  
22 hearing to push out an order, and then we could go  
23 from there?

24 THE COURT: My guess would be that I  
25 probably can rule orally, and then use the time

1 between that and the sentencing, if I deny the  
2 motions, to write the opinion. So I would imagine  
3 with a motion to withdraw it's either going to be  
4 something that I just feel like, Yeah, I need to  
5 grant it, or it's something I need to deny. So I  
6 don't think it will be something that probably I need  
7 to make a decision while I'm writing it. Does that  
8 make sense?

9 MS. MEASE: Yes. With the understanding  
10 that I don't anticipate filing objections to the  
11 PSR -- that's going to fall, I believe, mostly to Mr.  
12 Linnenburger -- I would say maybe 30 days out from  
13 our hearing on the motion to withdraw, we would aim  
14 for an objection deadline, and then another 30 days  
15 past that for sentencing memoranda. And then maybe  
16 two weeks following the sentencing memoranda we could  
17 aim for a sentencing date. That would put us  
18 sentencing, if we get there, mid to late July, if I'm  
19 estimating correctly.

20 THE COURT: All right. Does that sound  
21 about right to you, Mr. Linnenburger?

22 MR. LINNENBURGER: Yeah, that sounds fine,  
23 Your Honor. And if the Court or the Government  
24 desires a shorter timeframe, I think the 30 days for  
25 objections would be appropriate. I don't know if



1       thereafter we would require another month for  
2       sentencing memorandums. As the Court knows from my  
3       practice there tends to be some overlap. And when  
4       I'm looking at sentencing, I tend to be looking at  
5       the broader picture, as well as focusing it on  
6       specifics.

7               Having said that, Your Honor, if the  
8       Government wishes to have additional time -- I  
9       understand that this is a complicated sentencing in  
10      terms of the statutory sentencing factors, and there  
11      is a lot of moving parts -- and I would have no  
12      objection to the timetable suggested by Ms. Mease.  
13      Although, again, if we want to shorten that some, I  
14      am fine with that as well.

15             MS. MEASE: Your Honor, the parties can  
16      confer and put together a proposed scheduling order  
17      for the Court. That may be easier than trying to  
18      hammer out dates now.

19             THE COURT: Okay. Is that all right with  
20      you, Mr. Linnenburger?

21             MR. LINNENBURGER: That's fine, Your Honor.

22             THE COURT: All right. So I'll just look  
23      forward to an order then from you. All right. Can  
24      you think of anything else we need to discuss while  
25      we're together? Anything else I can do for you

1 today, Ms. Mease?

2 MS. MEASE: I don't believe so, Your Honor.

3 One thing I'll just flag is that all of the  
4 victims in this case reside out of state; some out of  
5 country, and -- or one, I should say, out of country.  
6 I do know that at least two wish to speak at  
7 sentencing, if we get to a sentencing hearing. And  
8 so I will be moving to have those statements provided  
9 remotely, which -- in basically the same format we're  
10 having this hearing. So I just wanted to flag that  
11 for the Court and Mr. Linnenburger. And I don't  
12 anticipate that would be an issue, but if it is --  
13 because I wasn't going to try to have folks flying in  
14 from all over to make a victim impact statement. But  
15 if that does become an issue or that's going to raise  
16 an objection on Mr. Streett's part, I would like to  
17 know sooner rather than later.

18 THE COURT: Do you anticipate any objection  
19 on that, Mr. Linnenburger?

20 MR. LINNENBURGER: I would have to confer  
21 with my client on that, Your Honor. But I can get  
22 with Ms. Mease as soon as possible if there is going  
23 to be an issue with that.

24 THE COURT: Does that work for you, Ms.  
25 Mease?

1 MS. MEASE: Yes.

2 THE COURT: All right. Anything else we  
3 need to discuss while we're together? Anything else  
4 I can do for you, Ms. Mease?

5 MS. MEASE: Not from the Government, Your  
6 Honor. Thank you.

7 THE COURT: How about you, Mr.  
8 Linnenburger?

9 MR. LINNENBURGER: Not from me, Your Honor.

10 THE DEFENDANT: Your Honor, am I allowed to  
11 say something?

12 THE COURT: Let me finish the hearing,  
13 Mr. Streett. I'll ask Mr. Linnenburger this  
14 question: I did read some of the correspondence that  
15 Mr. Streett has sent to me about a gun. And did that  
16 get resolved, Mr. Linnenburger, as to Mr. Streett's  
17 satisfaction?

18 THE DEFENDANT: No, Your Honor.

19 MR. LINNENBURGER: I don't believe it has,  
20 Your Honor. But I have not had specific conversation  
21 with him about that, Your Honor.

22 THE COURT: Well, you might pass on to him  
23 that, you know, just because I have jurisdiction over  
24 Mr. Streett, and just because I have jurisdiction  
25 over the FBI, doesn't mean I have jurisdiction over

1 things like City of Albuquerque and his mother and  
2 his ex-girlfriend, and those things. That's largely  
3 probably a civil lawsuit, and it probably is not  
4 going to have any federal nexus. So just because he  
5 can't have a gun, doesn't mean I can resolve disputes  
6 between third parties out there about a gun. He  
7 can't have a gun. But that doesn't mean I have  
8 authority under the Constitution or over the power  
9 that Congress has given us to -- for me to decide  
10 those things. So he can write me letters about it,  
11 and go into great detail about who has got what gun  
12 out there and stuff. But those are -- those involve  
13 parties that aren't before the Court. And I would be  
14 abusing my powers as a judge to start ordering the  
15 FBI to go do things that -- telling the executive  
16 branch what to do about a gun that doesn't really  
17 come before the Court. So I don't think there is  
18 anything I can do about that gun. And so it probably  
19 is not a good use of his time to write me letters  
20 about it. And it's not a good use of my time to be  
21 reading about things that I don't have the ability to  
22 do anything about, and will not do anything about.  
23 Because I don't think it would be proper for me to  
24 get involved in that.

25 THE DEFENDANT: Well, Your Honor, the main

1 issue I had with it, law enforcement agencies report  
2 that the gun had been stolen. It was thought to be  
3 with my ex-girlfriend, and she was supposed to turn  
4 them over to my family. And my mom tried to contact  
5 every possible law enforcement that had jurisdiction,  
6 state police, local sheriffs, and APD, and none of  
7 them would even entertain a report as to what had  
8 been stolen. And that was the issue. She complained  
9 that she could prove ownership, but no one would take  
10 a report because it was stolen.

11 THE COURT: Yeah. Well --

12 MR. LINNENBURGER: Your Honor, if it  
13 remains an issue, I will discuss that with him. And  
14 I appreciate the Court's guidance on that. I will  
15 have those discussions with Mr. Streett.

16 THE COURT: Yeah. I mean, I read all that,  
17 Mr. Streett, but that's just not part of this case.  
18 And I just can't start sweeping in everything that  
19 involves Bentley Streett into my case.

20 THE DEFENDANT: I understand.

21 THE COURT: So you can write me those  
22 letters, and I'll try to read them, but -- to be  
23 informed about you as we try to bring this case to a  
24 conclusion -- but again, I know you've heard me say  
25 this many times, but, you know, you've got some

1 issues that you can take to the Tenth Circuit. And  
2 as long as we keep doing motions to withdraw and  
3 things like that, you're never going to get to the  
4 Tenth Circuit with those issues. I've worked hard on  
5 them. I know you disagree with them, and that's  
6 fine. People disagree with me all the time. And the  
7 that's the way our system works. But as long as we  
8 keep working with these motions to withdraw and  
9 things like that and get sidetracked about guns and  
10 stuff like that, we're never going to keep our eye on  
11 the fact that I need to sentence you so that you can  
12 get to the Tenth Circuit. That's the thing that I  
13 think you ultimately want. And the sooner we get to  
14 that point, I think it's better for you and all of us  
15 to bring it to a conclusion here. Because I've done  
16 just about the best I can. And I need to get you up  
17 to the Tenth Circuit so you can make arguments about  
18 your two big motions that you have in the conditional  
19 appeal up there. But you'll have to make a decision.  
20 I mean, I know it's not my decision to make. It's  
21 your decision to make. But I do sort of remind you  
22 that we're continuing to delay getting you an  
23 ultimate resolution of those two things that have  
24 been important to you to be a conditional appeal.

25 THE DEFENDANT: Thanks, Your Honor.

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1     Getting anything overturned in the Tenth Circuit for  
2     that matter I'm not putting much stock in that.

3             THE COURT: Well, if you read the paper  
4     this morning, they got reversed by the Supreme Court  
5     this morning. So it happens.

6             THE DEFENDANT: Yes, I did read that.

7             THE COURT: Did you have anything else, Mr.  
8     Streett?

9             THE DEFENDANT: I did, as far as I wanted  
10    to make sure that any hearings or anything we have  
11    were in person. I was not aware of this conference  
12    until minutes before I was brought in here. But  
13    otherwise, I do not consent to having any kind of  
14    remote hearings, anything especially that involves  
15    witnesses or evidence or anything like that. So I  
16    don't think counsel and I have gotten that far and  
17    discussed that. But since the Government raised it,  
18    I do not consent to any kind of remote hearings.

19            THE COURT: Okay. Now, sort of  
20    unscrambling that for a minute, you don't have to  
21    consent to a video sentencing or things like that.  
22    So I understand that. But do you have any problem  
23    with, if we get to a sentencing, with these two  
24    victims testifying or speaking to the Court by video?

25            THE DEFENDANT: Yes, Your Honor, I do.

1 THE COURT: Okay. And what's the basis of  
2 your objection, Mr. Streett?

3 THE DEFENDANT: Okay. Without getting too  
4 much information, I have not discussed with counsel.  
5 I did read the Government's, at some point in  
6 reference to one of the victims. And much of that  
7 information was incorrect and untruthful. And so I  
8 have not a chance to discuss with counsel if he needs  
9 to allow to cross-examine this witness, or him raise  
10 any of those inconsistencies with what they stated.  
11 And I just don't want those untruthful statements to  
12 be considered truth in fact, when in fact they're not  
13 without anyone challenging it.

14 THE COURT: Well, I do encourage you to  
15 talk to Mr. Linnenburger. But at a sentencing it's  
16 typically not the case that you're entitled to  
17 cross-examine. Nobody is going to cross-examine you,  
18 and you get to speak in court. And nobody typically  
19 gets to cross-examine the victims. So it's one of  
20 those things where we just come and everybody just  
21 gives their information to the Court, and the Court  
22 does the best it can to come up with a sentence that  
23 reflects the factors in 18 USC Section 3553(a). So  
24 it's adversarial in that it's you against the United  
25 States. But it's not typically adversarial as to the



1 victims. They just come and speak. So oftentimes I  
2 get by letters -- I don't usually have people  
3 objecting to people calling in, listening, and things  
4 like that. So it's a little bit different hearing  
5 than, you know, hearings like suppression hearings  
6 and things like that, where -- or trials -- where  
7 people do get a right to cross-examine. So think  
8 about it. Mr. Linnenburger can look at the issue,  
9 and then if there is not an agreement, then I guess I  
10 can look further at the issue. But I have not had a  
11 defendant object before so it's not something I have  
12 bottomed out on before in my life.

13 THE DEFENDANT: Your Honor, some of that  
14 information has already been provided, and I've  
15 already been able to review, and it's contradictory  
16 with the evidence in discovery. It's a little harder  
17 for someone to sit in a courtroom and look you in the  
18 face and lie about it than they are in a room 1,000  
19 miles away.

20 MR. LINNENBURGER: Your Honor, to the  
21 extent any such objection from Mr. Streett relies on  
22 any -- or is tied up the objections to the  
23 presentence report, we will obviously address them  
24 through that channel.

25 At the same time, Your Honor, I intend to

1 have discussions with Mr. Streett as to what the  
2 sentencing process entails, what a sentencing hearing  
3 details. And in that conversation, I would discuss  
4 with him the Government's request. And if there are  
5 objections remaining at that time, I will notify Ms.  
6 Mease, and let the Government know the basis of any  
7 objections, so that, if need be, we can get the issue  
8 before the Court in advance of sentencing, Your  
9 Honor.

10 THE COURT: And, you know, I'm not imposing  
11 this, but there might be a compromise that could be  
12 worked. Maybe the victims could write out their  
13 statement. This often happens that victims read me  
14 something here in the courtroom, and they read a  
15 statement, and they agree that everything they're  
16 going to say is in the statement, and they'll just  
17 read that statement to me in open court. But they've  
18 got to send it to you X number of days before the  
19 hearing so that Mr. Streett can look at it and be  
20 prepared to respond to it. Something like that is a  
21 possibility. I'm not saying that's the only  
22 solution, but it's something y'all might give some  
23 thought to. And that way it addresses Mr. Streett's  
24 concerns and it also addresses the distance concerns  
25 for the victims.

1 All right. Anything else, Mr. Streett?

2 THE DEFENDANT: Yes, Your Honor. I've been  
3 trying to get filings from counsel. I have not  
4 received anything after document 230. And I have not  
5 had notice communication to counsel to get those, nor  
6 have I seen those. I still haven't received anything  
7 filed from 231 on.

8 THE COURT: Okay. Mr. Linnenburger?

9 MR. LINNENBURGER: Your Honor, without  
10 getting into any conversations between Mr. Streett  
11 and my office, I will say that documents that are  
12 appropriate for Mr. Streett to have have been sent to  
13 him. He may not have received them as of yet, but  
14 they have been sent to him.

15 As this Court knows, there is a protective  
16 order in place. And so there are certain documents  
17 that I don't believe it's anything on the record or  
18 that has been filed in the last few days or weeks.  
19 But there are certain things that I am not permitted  
20 to provide to Mr. Streett. And I just want the Court  
21 to know that I'm aware of that, and that we have made  
22 sure that we have not provided any of the materials  
23 that are subject to the protective order.

24 THE COURT: All right. Anything else, Mr.  
25 Streett?

1 THE DEFENDANT: Yes, sir, Your Honor. I'm  
2 aware of what counsel just said. And I'm not asking  
3 for anything that falls under the protective order.  
4 I'm just asking for anything that's been filed so I  
5 can review it.

6 THE COURT: All right. Anything else, Mr.  
7 Streett?

8 THE DEFENDANT: I don't believe so, Your  
9 Honor.

10 THE COURT: All right.

11 THE DEFENDANT: I do want a transcript of  
12 this hearing. I don't know what I have to do to  
13 request it or be able to get a transcript of it.

14 THE COURT: All right. I'm sure Mr.  
15 Linnenburger, if y'all decide you want a transcript,  
16 can make arrangements for that.

17 All right. If there is nothing else,  
18 y'all -- I appreciate your presentations. We've got  
19 some dates set. And we'll try to work with each  
20 other to make them work for everybody involved.

21 Y'all have a good afternoon, good weekend.  
22 Be safe out there, okay?

23 THE DEFENDANT: One other thing, part of  
24 the reason for not wanting to have the remote  
25 hearings is I can't confer with counsel on

1 anything -- you're asking me questions -- because  
2 it's open, and especially anything that has any  
3 significance. Beyond this type of hearing, I'd like  
4 to have counsel present so I can ask him when I have  
5 questions or issues with anything. And that's part  
6 of the concern about not being remote.

7 THE COURT: Well, that's fine. It's your  
8 choice at sentencing whether you want to be here or  
9 not. But there is a function that we use all the  
10 time, that we can give you -- just you and Mr.  
11 Linnenburger talk to each other with these government  
12 Zooms that we use. So counsel and defendants talk  
13 all the time privately, in privileged ways. So it  
14 can be done, and it is done fairly frequently. But  
15 that's something for you to think about down the road  
16 if we get to the point of sentencing.

17 THE DEFENDANT: Okay. I'm just not aware.  
18 I've never done any of this before, so I'm not sure  
19 how that works.

20 THE COURT: You just ask for it and we put  
21 you and Mr. Linnenburger in a chat room, and y'all  
22 talk, and we can't hear you.

23 THE DEFENDANT: Okay.

24 THE COURT: All right. Y'all have a good  
25 afternoon. Be safe out there.

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(The Court was adjourned.)

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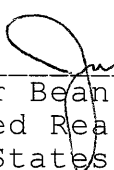
## C-E-R-T-I-F-I-C-A-T-E

UNITED STATES OF AMERICA

DISTRICT OF NEW MEXICO

I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,  
Official Court Reporter for the State of New Mexico,  
do hereby certify that the foregoing pages constitute  
a true transcript of proceedings had before the said  
Court, held in the District of New Mexico, in the  
matter therein stated.

In testimony whereof, I have hereunto set my  
hand on April 23, 2021.



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